

Introduced: 1/16/78  
Referred: Health, Education &  
Social Services and Judiciary

1 IN THE HOUSE

BY MILLER AND RUDD

2 HOUSE BILL NO. 632

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to death and dying; and providing for  
7 an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 12. NATURAL DEATH ACT.

11 Sec. 18.12.010. LEGISLATIVE FINDINGS AND DECLARATIONS. (a) The  
12 legislature finds that

13 (1) adult persons have the fundamental right to make decisions  
14 relating to their own medical care, including the decision to have life-  
15 sustaining procedures withheld or withdrawn in the instance of a terminal  
16 condition;

17 (2) modern medical technology has made possible the artificial  
18 prolongation of human life beyond natural limits; and such prolongation  
19 of life for persons with a terminal condition may cause loss of patient  
20 dignity and unnecessary pain and suffering;

21 (3) there exists considerable uncertainty in the medical and  
22 legal professions as to the legality of terminating or failing to apply  
23 life-sustaining procedures when the patient has voluntarily and in sound  
24 mind evidenced a desire that those procedures be withheld or withdrawn.

25 (b) In recognition of the dignity and privacy which patients have  
26 a right to expect, the legislature hereby declares that the laws of  
27 Alaska recognize the right of an adult person to make a written directive  
28 instructing his physician to withhold or withdraw life-sustaining  
29 procedures in the event of a terminal condition.

1           Sec. 18.12.020. DIRECTIVE TO PHYSICIANS. (a) An adult person may  
2 at any time execute a directive directing the withholding or withdrawal  
3 of life-sustaining procedures in the event the person enters into a  
4 terminal condition. The directive shall be signed by the declarant in  
5 the presence of two witnesses not related to the declarant by blood or  
6 marriage and who would not be entitled to a portion of the estate of the  
7 declarant upon his decease under a will of the declarant or codicil then  
8 existing or, at the time of the directive, by operation of law then  
9 existing. In addition, a witness to a directive may not be the attending  
10 physician, an employee of the attending physician or a health facility  
11 in which the declarant is a patient, or a person who has a claim against  
12 a portion of the estate of the declarant upon his decease at the time of  
13 the execution of the directive. The directive shall be in the following  
14 form but in addition may include other specific directions:

15                           "DIRECTIVE TO PHYSICIANS

16 Directive made this ..... day of .....(month, year). I,  
17 ....., being of sound mind, wilfully and voluntarily make known  
18 my desire that my life shall not be artificially prolonged under the  
19 circumstances set out below and do hereby declare:

20 1. If at any time I should have an incurable injury, disease, or ill-  
21 ness certified to be a terminal condition by two physicians, and the  
22 application of life-sustaining procedures would serve only to prolong  
23 artificially the moment of my death and my physician determines that my  
24 death is imminent whether or not life-sustaining procedures are utilized,  
25 I direct that such procedures be withheld or withdrawn and that I be  
26 permitted to die naturally.

27 2. In the absence of my ability to give directions regarding the use of  
28 life-sustaining procedures, it is my intention that this directive shall  
29 be honored by my family and physician(s) as the final expression of my

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legal right to refuse medical or surgical treatment and accept the consequences of that refusal.

3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

4. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed.....

City and State of Residence.....

The declarant has been personally known to me and I believe him or her to be of sound mind.

Witness.....

Witness....."

(b) The directive or a copy of the directive shall be made a part of the patient's medical records.

Sec. 18.12.030. PRESUMPTION. A directive is conclusively presumed, unless revoked, to be the directions of the declarant regarding the withholding or withdrawal of life-sustaining procedures.

Sec. 18.12.040. REVOCATION OF DIRECTIVE. (a) A directive may be revoked at any time by the declarant, without regard to his mental state or competency, by any of the following methods:

(1) by being cancelled, defaced, obliterated, or burnt, torn, or otherwise destroyed by the declarant or by some person in his presence and by his direction;

(2) by a written revocation of the declarant expressing his intent to revoke, signed and dated by the declarant; the revocation shall become effective only upon communication to the attending physician by the declarant or by a person acting on behalf of the declarant; the attending physician shall record in the patient's medical record the

1 time and date when he received notification of the written revocation.

2 (3) by a verbal expression by the declarant of his intent to  
3 revoke the directive; the revocation shall become effective only upon  
4 communication to the attending physician by the declarant; the attending  
5 physician shall record in the patient's medical record the time, date,  
6 and place of the revocation.

7 (b) There is no criminal or civil liability on the part of any  
8 person for failure to act upon a revocation made under this section  
9 unless that person has actual knowledge of the revocation.

10 Sec. 18.12.050. IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY. No  
11 physician or health facility which acts in accordance with the require-  
12 ments of this chapter and causes the withholding or withdrawal of life-  
13 sustaining procedures from a qualified patient may be subject to civil  
14 liability arising from those acts. No licensed health professional,  
15 acting under the direction of a physician, who participates in the  
16 withholding or withdrawal of life-sustaining procedures in accordance  
17 with the provisions of this chapter may be subject to any civil lia-  
18 bility. No physician or licensed health professional acting under the  
19 direction of a physician who participates in the withholding or with-  
20 drawal of life-sustaining procedures in accordance with the provisions of  
21 this chapter is guilty of any criminal act or of unprofessional conduct.

22 Sec. 18.12.060. DUTIES OF PHYSICIAN. (a) Before withholding or  
23 withdrawing life-sustaining procedures from a qualified patient under a  
24 directive, the attending physician shall determine that the directive  
25 complies with sec. 20 of this chapter, and, if the patient is mentally  
26 competent, that the directive and all steps proposed by the attending  
27 physician to be undertaken are in accord with the desires of the  
28 qualified patient.

29 (b) A failure by a physician to carry out the directive of a

1 qualified patient under (a) of this section constitutes unprofessional  
2 conduct if the physician refuses to make the necessary arrangements or  
3 fails to take the necessary steps to effect the transfer of the qualified  
4 patient to another physician who will carry out the directive. No  
5 licensed health professional acting under the direction of a physician  
6 may be held civilly liable for failing to carry out a directive of a  
7 qualified patient under this section.

8 Sec. 18.12.070. SUICIDE. The withholding or withdrawal of life-  
9 sustaining procedures from a qualified patient in accordance with the  
10 provisions of this chapter does not, for any purpose, constitute a  
11 suicide.

12 Sec. 18.12.080. INSURANCE. The making of a directive under sec. 20  
13 of this chapter does not restrict, inhibit, or impair in any manner the  
14 sale, procurement, or issuance of any policy of life insurance nor does  
15 it modify the terms of an existing policy of life insurance. No policy  
16 of life insurance is legally impaired or invalidated in any manner by the  
17 withholding or withdrawal of life-sustaining procedures from an insured  
18 qualified patient, notwithstanding any term of the policy to the con-  
19 trary.

20 Sec. 18.12.090. DIRECTIVE AS A VOLUNTARY ACT. No physician,  
21 health facility, or other health provider, and no health care service  
22 plan, insurer issuing disability insurance, self-insured employee wel-  
23 fare benefit plan, or nonprofit hospital service plan, may require any  
24 person to execute a directive as a condition for being insured for or  
25 receiving health care services.

26 Sec. 18.12.100. RIGHTS AS CUMULATIVE. Nothing in this chapter  
27 impairs or supersedes any legal right or legal responsibility which a  
28 person may have to effect the withholding or withdrawal of life-sustain-  
29 ing procedures in any lawful manner or to consent to or refuse medical

1 treatment, whatever the person's physical condition. In those respects  
2 the provisions of this chapter are cumulative.

3 Sec. 18.12.110. CRIMINAL PENALTIES. A person who wilfully con-  
4 ceals, cancels, defaces, obliterates, or damages the directive of  
5 another without that declarant's consent is guilty of a misdemeanor. A  
6 person who forges the directive of another or wilfully conceals or  
7 withholds personal knowledge of a revocation under sec. 40 of this  
8 chapter, with the intent to cause a withholding or withdrawal of life-  
9 sustaining procedures contrary to the wishes of the declarant and,  
10 because of that act, directly causes life-sustaining procedures to be  
11 withheld or withdrawn and death to be hastened, is guilty of murder in  
12 the first degree and upon conviction is punishable by imprisonment for  
13 not less than 20 years to life.

14 Sec. 18.12.120. CONSTRUCTION OF CHAPTER. Nothing in this chapter  
15 may be construed to condone, authorize, or approve mercy killing, or  
16 euthanasia or to permit any affirmative or deliberate act or omission to  
17 end life other than to permit the natural process of dying as provided  
18 in this chapter.

19 Sec. 18.12.130. DEFINITIONS. In this chapter,

20 (1) "attending physician" means the physician selected by or  
21 assigned to the patient who has primary responsibility for the treatment  
22 and care of the patient;

23 (2) "directive" means a written document voluntarily executed  
24 by the declarant in accordance with the requirements of sec. 20 of this  
25 chapter;

26 (3) "life-sustaining procedure" means any medical procedure  
27 or intervention which utilizes mechanical or other artificial means to  
28 sustain, restore, or supplant a vital function, which when applied to a  
29 qualified patient would serve only to prolong artificially the moment of

1 death and when, in the judgment of the attending physician, death is  
2 imminent whether or not those procedures are utilized; "life-sustaining  
3 procedure" does not include the administration of medication or the  
4 performance of any medical procedure considered necessary to alleviate  
5 pain;

6 (4) "physician" means a physician or surgeon licensed by the  
7 State Medical Board;

8 (5) "qualified patient" means a patient diagnosed and certi-  
9 fied in writing to be afflicted with a terminal condition by two physi-  
10 cians, one of whom is the attending physician, who have personally  
11 examined the patient;

12 (6) "terminal condition" means an incurable condition caused  
13 by injury, disease, or illness, which, regardless of the application of  
14 life-sustaining procedures, would, in reasonable medical judgment,  
15 produce death, and when the application of life-sustaining procedures  
16 serves only to prolong the moment of death of the patient.

17 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-  
18 070(c).

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